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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. [redacted] 6

D. W. McEACHERN, ADMINISTRATOR OF THE ESTATE OF S. C. McEACHERN, DECEASED,

Petitioner,

vs.

J. T. ROSE, FORMER COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

REPLY MEMORANDUM FOR PETITIONER.

W. A. SUTHERLAND,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 750.

D. W. McEACHERN, ADMINISTRATOR OF THE ESTATE OF S. C. McEACHERN, DECEASED,

Petitioner,

vs.

J. T. ROSE, FORMER COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

REPLY MEMORANDUM FOR PETITIONER.

In opposing the granting of certiorari in this case, the Respondent argues that the decision of the Circuit Court of Appeals does not rest on estoppel, but on recoupment, and that there is therefore no conflict of decisions as stated in the petition for certiorari herein.

As was pointed out in the brief in support of the petition (pp. 14, 15), the decisions in the case at bar and in *Commissioner* v. *Farren*, 82 F. (2d) 141, both rest upon similar *vague grounds of unfairness*, coupled in some hazy way with the doctrine of estoppel. In the case at bar, the Circuit Court of Appeals identified its decision with the doctrine of estoppel to *exactly the same extent* as did the Court in the *Farren* case. A comparison of the opinion of the court below with the opinion in the *Farren* case makes this readily apparent.

It follows therefore that if the *Farren* case is in conflict with *Salvage* v. *Commissioner*, 76 F. (2d) 112, *Commissioner* v. *Union Pacific R. Co.*, 86 F. (2d) 637, and *A. G. Hull* v. *Commissioner*, 87 F. (2d) 260, then the case at bar is equally in conflict with those decisions. The conflict of the *Farren* case with the case of *Commissioner* v. *Union Pacific R. Co., supra*, was expressly recognized by the Circuit Court of Appeals for the Second Circuit in the latter case. The nature of the conflict is fully described in the brief in support of petition at pages 12-17.

It follows therefore that the Respondent errs in denying that the decision of the Circuit Court of Appeals in the case at bar is in conflict with *Salvage* v. *Commissioner*, *Commissioner* v. *Union Pacific R. Co.*, and *A. G. Hull* v. *Commissioner, supra.*

In connection with the Respondent's suggestion that the decision of the Circuit Court of Appeals in the case at bar rests on recoupment, it may be observed that the opinion nowhere refers to recoupment or otherwise indicates that the court below relied on the doctrine of recoupment. But even if the decision did rest on recoupment, it would be clear that this Court should grant the petition for certiorari, because in that event this case would present the same questions which are before this Court in *Stone* v. *White*, No. 202, October Term, 1935, and in *United States ex rel Girard Trust Co.* v. *Helvering*, No. 285, October Term,

1936, in which cases this Court has granted certiorari since the petition for certiorari was filed in the case at bar.

It is therefore prayed that the petition be granted.

Respectfully submitted,

W. A. SUTHERLAND,
Counsel for Petitioner.